

## First gun jumping decision of the Hungarian Competition Authority

The Hungarian Competition Authority ("HCA") has imposed a fine of HUF 1 million (approx EUR 3,200) on CEE Holding Group Limited and Olympic International Holdings Limited, for implementing a concentration prior to authorisation by the HCA (cf Vj/145/2015., the decision may be found [here](#)). By implementing the concentration without merger control clearance the applicants breached the standstill obligation enshrined in the Hungarian Competition Act. The HCA was notified voluntarily 64 days after the shares had been transferred. The oversight of the filing obligation in Hungary was put down to a misunderstanding on the managements' side (as provided by the applicants). This decision is the first fine for gun-jumping in Hungary and sheds some light onto how the HCA will make use of its newly acquired enforcement rights. It is also interesting to note that two companies (the acquirers) were held jointly and severally liable for the infringement.

### **Suspension clause only recently added to the Hungarian merger control regime**

An explicit prohibition to implement a (notifiable) concentration prior to approval by the HCA, was only added to the Hungarian Competition Act in 2014. Prior to that, Hungary was one of the few exceptions in Europe where undertakings were allowed to close transactions before their authorisation without any negative consequences (assuming that what they implemented was ultimately cleared by the HCA). In order to tackle this loophole, the legislator decided to bring the legal framework in line with EU law. The Hungarian standstill obligation came into effect on 1 July 2014.

### **Level of fines - not what one is generally used to in Europe**

As a general rule, the HCA may impose a fine on the acquirer (or – in the case of a merger or creation of a joint venture – on the direct participants) of up to 10 % of the previous year's net turnover of the undertaking. However, the rules of setting the fine differ, based on whether an already closed transaction was notified voluntarily (the proceeding was commenced following a voluntary notification of the applicants), or the HCA initiated the proceeding for gun-jumping *ex officio*.

In the latter case the fine is calculated on a daily basis, considering the period between the announcement of the public bid, conclusion of the contract or acquisition of control rights (whichever is the earliest in time), and the initiation of the proceedings by the HCA. The HCA may impose a fine from HUF 50,000 to HUF 200,000 per day. Therefore in *ex officio* cases two different caps apply in parallel (HUF 200,000/day and a maximum 10 % of the previous year's net turnover) while the minimum amount of the fine is also set.

In contrast, there is no daily fine in the case where the proceedings are based on a (belated but voluntary) notification. It is then at the discretion of the HCA to decide on the amount of the fine within the 10 % cap, weighing in the duration of the infringement, mitigating and aggravating circumstances, as well as the impact of

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the transaction on competition in Hungary. On a balance, companies seem better off if they submit a belated filing voluntarily (see also below).

## **The actual decision – a symbolic fine**

In the current case – due to the voluntary nature and further mitigating circumstances – the HCA decided to impose a symbolic fine on the applicants. The decision demonstrates that in the case where a concentration is notified voluntarily, even though the applicants have breached the standstill obligation, the fine imposed by the HCA may remain moderate, while complete ignorance of a filing obligation in Hungary may lead to a significantly higher fine.

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